

In re Application of
Frank D. Husson, Jr.
Application No. 10/039,277
Page 7

Atty. Dkt. No. SOLAR1120-3
(051264-0306)

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

By the present communication, Claims 1 and 39 are currently being amended and Claims 2, 24, 25, 28-31, 33 and 34 are requested to be cancelled.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented in the Listing of Claims, found on pages 2-6 of this amendment, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1, 3, 6, 7, 9, 10, 12-15, 17-22, 26, 37-39, 43, 44 and 47 are now pending in this application.

The drawings are objected to for failing to illustrate certain features recited in claims 24, 25, 28-31, 33 and 34. Applicant has canceled claims 24, 25, 28-31, 33 and 34 without prejudice or disclaimer. Accordingly, the objection should now be withdrawn.

Claims 1, 2, 3, 6, 7, 9, 10, 12, 13, 17-22, 24, 25, 26, 29-31, 33, 34, 37-39, 43 and 47 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over German Reference DE 28 51 793 to Luboschik et al. (hereinafter "Luboschik") in view of U.S. Patent No. 3,939,968 to Ryder (hereinafter "Ryder"), U.S. Patent No. 4,557,251 to Burkhardt (hereinafter "Burkhardt"), U.S. Patent No. 4,520,793 to Hall (hereinafter "Hall"), and U.S. Patent No. 4,328,790 to Kircus (hereinafter "Kircus"). Further, claims 10, 14, 15 and 44 stand rejected in the Office Action under 35 U.S.C. § 103(a) as allegedly being unpatentable over Luboschik in view of Ryder, Hall, and Kircus, and further in view of U.S. Patent No. 6,263,870 to Stoumen. As to canceled claims 2, 24, 25, 28-31, 33 and 34, the rejections are moot. As to the remaining claims, Applicant respectfully traverses the rejection for at least the following reasons.

In re Application of
Frank D. Husson, Jr.
Application No. 10/039,277
Page 8

Atty. Dkt. No. SOLAR1120-3
(051264-0306)

Applicant's invention relates to a simple, inexpensive and portable apparatus for heating and pasteurizing liquids, such as water, and methods for using and forming the apparatus. In particular, the invention is directed to such an apparatus adapted to operate using solar energy. As recited in claim 1, invention apparatus comprises a flexible water-tight resealable container having at least one resealable opening. The opening includes at least one water-tight spout with a mating resealable cap, which includes a bracket for receiving one or more reuseable temperature indicators. The temperature indicator is a glass tube containing wax. The wax is adapted to melt at pasteurization temperatures. Thus, a user can be certain that the contents of the container are safe for consumption, for example. The cited references, either individually or in combination, fail to disclose the invention, as recited in amended claim 1.

The Examiner's rejection of the claims relies upon Ryder, which discloses a system for holding contact lenses. As indicated by Applicant in a prior communication, Ryder is non-analogous to the present invention. First, Ryder does not relate to pasteurization systems. Rather, Ryder relates to the sterilization of contact lenses. Second, Ryder in no way relates to systems operating using solar energy. To the contrary, Ryder relies on an external heating device: "The contact lens holder 10 is then placed in a heating unit, such as an autoclave or boiler" Ryder, col. 4, lines 23-24. Accordingly, Ryder constitutes non-analogous art, and the Examiner's reliance on Ryder is inappropriate.

Further, the Examiner takes Official Notice in seven instances in concluding that incorporating a certain feature into the context required by Applicant's apparatus would have been obvious to a person having ordinary skill in the art. For example, in the sentence which bridges pages 16-17 of the Official Action, the Examiner purports to take Official Notice "that it is well known to form water temperature history indicators of the type taught by Ryder from glass."

In re Application of
Frank D. Husson, Jr.
Application No. 10/039,277
Page 9

Atty. Dkt. No. SOLAR1120-3
(051264-0306)

"Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances." M.P.E.P. § 2144.03(A). Such official notice without documentary evidence "should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well known." *Id.*

None of the multiple instances where the Examiner takes Official Notice in the pending action are supported by documentary evidence. Further, the facts asserted as common knowledge by the Examiner do not fall under the category of instantly and unquestionably demonstrable as being well known. Accordingly, the Examiner's use of Official Notice is inappropriate and, consequently, the Office Action fails to establish a prima facie case of obviousness. See M.P.E.P. § 2143 ("the prior art reference (or references when combined) must teach or suggest all the claim limitations").

Further, the Examiner's characterization of the temperature indicator recited in amended claim 1 (formerly recited in claim 2) as the "indicators of the type taught by Ryder" is inaccurate. The temperature indicator recited in amended claim 1 is patentably distinct from the arrangement disclosed in Ryder.

As to independent claim 43, it is unclear to the Applicant which reference is asserted by the Examiner as disclosing a method of assembly of a solar water pasteurizer, as recited in claim 43. In particular, the cited references, either individually or in combination, fail to disclose the steps recited in pending claim 43. For example, none of the references disclose "stacking and bonding a fourth sheet of flexible polymeric material to said first sheet of material along the perimeter thereof, said fourth sheet providing a transparent insulating airspace."

Accordingly, the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

In re Application of
Frank D. Husson, Jr.
Application No. 10/039,277
Page 10

Atty. Dkt. No. SOLAR1120-3
(051264-0306)

The Examiner is invited to contact the undersigned by telephone in the event any issues remain in view of this communication so that a prompt disposition of this application can be achieved.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

Respectfully submitted,

Date February 19, 2004

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